IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.3249 of 2006
with
FIRST APPEAL No.3250 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER & 1 - Appellant(s)
Versus
HITESHKUMAR CHIMANBHAI & 1 - Defendant(s)

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Appearance :
LR PUJARI, ASSTT. GOVERNMENT PLEADER for Appellants

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CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 13/10/2006

ORAL JUDGMENT (Per: HON'BLE MR.JUSTICE J.M.PANCHAL)

1. These appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short), read with Section 96 of the Code of Civil Procedure, 1908, are directed against the common judgment and award dated September 8, 2004, rendered by the learned Second Extra Assistant Judge and Special Judge (LAR) Ahmedabad (Rural) at Ahmedabad in Land Acquisition Case No.49 of 2000 and Land Acquisition Case No.50 of 2000, by which, the claimants are awarded additional compensation at the rate of Rs.48/- per sq.mt. over and above the amount of compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.3.30 ps. per sq.mt. for irrigated lands and Rs.2.20 ps. per sq.mt. for non-irrigated lands, by his award dated February 24, 2000, for their acquired lands.

2. A proposal was received by the State Government to acquire the agricultural lands of village Bahiyal, Taluka: Dehgam, District: Ahmedabad, for the public purpose of Narmada Project. On consideration of the said proposal, the State Government was satisfied that the agricultural lands of village Bahiyal were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued which was published in the official gazette on December 12, 1997. The land owners were thereafter served with notices under Section 4 of the Act. They opposed the proposed acquisition. After considering their objections, a report was forwarded by the Special Land Acquisition Officer to the State Government as contemplated by Section 5A(2) of the Act. On scrutiny of the said report, the State Government was satisfied that the agricultural

lands of village Bahiyal which were specified in the notification published under Section 4(1) of the Act were needed for the public purpose of Narmada Project. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on July 1, 1998. The interested persons were thereafter served with the notices under Section 9 of the Act for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.100/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated February 28, 2000, offered compensation to the claimants at the rate of Rs.3.30 ps. per sq.mt. for irrigated lands and Rs.2.20 ps. per sq.mt. for non-irrigated lands. The claimants were of the opinion that

the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they preferred applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer the matter to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Ahmedabad (R), where they were registered as Land Acquisition Case No.49 of 2000 and Land Acquisition Case No.50 of 2000.

3. On behalf of the claimants, oral as well as documentary evidence was adduced. The witness examined on behalf of the claimants asserted that the lands acquired were highly fertile and that each claimant was earning an income of Rs.40,000/- to Rs.50,000/- per year per Vigha from the sale of agricultural produces. The witness produced previous

award of the Reference Court relating to the lands of this very village rendered in Land Acquisition Case No.40 of 1995 to Land Acquisition Case No.81 of 1995 with Land Acquisition Case No.208 of 1995 to Land Acquisition Case No.229 of 1995 with Land Acquisition Case No.769 of 1991 by the Second Extra Assistant Judge and Special Judge (LAR), Ahmedabad (Rural) at Navrangpura, Ahmedabad, on January 31, 2002, in support of the claim made by the claimants for enhanced compensation. On behalf of the appellants, Mr.S.S.Jafar, who was then Deputy Executive Engineer was examined.

4. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of this very village furnished good guidance for the purpose of determining the market value of the the lands subsequently acquired in the

instant case. It was further noticed by the Reference Court that there was time-gap of six years between the two notifications issued under Section 4(1) of the Act in the two cases and therefore, the claimants in the instant case were entitled to reasonable rise in price of lands at the rate of 10% p.a. On the basis of the previous award of the Reference Court, the Reference Court in the instant case has awarded additional amount of compensation at the rate of Rs.48/- per sq.mt. to the claimants by judgment and award dated September 8, 2004, giving rise to the abovenumbered Appeals.

5. This Court has heard Mr.L.R.Pujari, learned Assistant Government Pleader for the appellants and considered the oral as well as documentary evidence produced by him for perusal of the Court.

6. Though it was claimed by the witness for

the claimants that the lands acquired in the instant case were highly fertile and that each claimant was earning income of Rs.40,000/- to Rs.50,000/- per Vigha per year from the sale of agricultural produces, no evidence was adduced to substantiate the said claim. The record does not indicate that any sale-deed was relied upon by the claimants for the purpose of claiming enhanced compensation nor the enhanced compensation was claimed on yield basis. What was relied upon by the claimants in support of their claim for enhanced compensation was the previous judgment and award of the Reference Court relating to the lands of this very village rendered on January 31, 2002 by the learned Second Extra Assistant Judge and Special Judge, LAR, Ahmedabad (R) at Navrangpura, in Land Acquisition Case No.40 of 1995 and other cognate matters. The said judgment indicates that lands

of village Bahiyal were acquired for public purpose of construction of Narmada Main Canal of Sardar Sarovar Project pursuant to publication of notifications issued under Section 4 of the Act in the official gazette on June 11, 1990 and January 29, 1991. Therein, the Special Land Acquisition Officer, by two awards dated April 29, 1991 and August 4, 1993, had offered compensation to the claimants at the rate of Rs.2.70 ps. per sq.mt. for irrigated lands and Rs.1.80 ps. per sq.mt. for non-irrigated lands. Feeling aggrieved, the claimants had sought References and had claimed compensation at the rate of Rs.100/- per sq.mt. but the Reference Court, by judgment and award dated January 31, 2002, awarded additional compensation at the rate of Rs.31.20 ps. per sq.mt. for irrigated lands and Rs.30.30 per sq.mt. for non-irrigated lands. The testimony of witness examined on behalf of the

claimants would indicate that the lands which were acquired earlier were similar in all respects to the lands which were acquired in the instant case. It is well settled that the previous award of the Reference Court, relating to the lands of a village, which has attained finality, can be relied upon for the purpose of determining the market value of the lands acquired subsequently from the same village. It is not the case of the appellants that the previous award of the Reference Court has not attained finality or that the said award was modified by the higher forum. Under the circumstances, this Court is of the opinion that the Reference Court was justified in relying upon the previous award of the Reference Court relating to the lands of this very village for the purpose of determining the market value of the lands acquired in the instant case. Further, as is evident from the

record of the case, in the previous case, notifications issued under Section 4(1) of the Act were published in the official gazette on October 15, 1990, and August 9, 1991, whereas in the instant case, notification under Section 4(1) of the Act was published in the official gazette on December 12, 1997, and as there is gap of six years, the Reference Court was justified in holding that the claimants would be entitled to reasonable rise in price of lands at the rate of 10% p.a. The calculation of the amount of compensation payable to the claimants on the basis of previous award of the Reference Court is not shown to be erroneous by the learned Assistant Government Pleader for the appellants. On re-appreciation of evidence adduced by the parties, this Court is of the opinion that correct findings of facts have been recorded by the Reference Court on appreciation of evidence

adduced by the parties, to which well settled principles of law have been applied. The learned Assistant Government Pleader for the appellants could not persuade this Court to take a view different than the one which is taken by the Reference Court. As this Court does not find any substance in the Appeals filed by the appellants, the same deserve to be dismissed.

7. For the foregoing reasons, both the Appeals fail and are dismissed. The Registry is directed to draw decree in terms of this judgment as early as possible.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

(sunil)